

AMENDED IN ASSEMBLY APRIL 27, 2005

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 568

Introduced by Assembly Member Garcia

(Coauthors: Assembly Members Benoit, Berg, Bogh, Daucher, DeVore, Emmerson, Haynes, Houston, Keene, La Suer, Lieber, Maze, Montanez, Parra, Plescia, Sharon Runner, Spitzer, Tran, Villines, and Wyland)

(Coauthor: Senator Ducheny)

February 16, 2005

An act to add Section 121022 to the Health and Safety Code, relating to HIV.

LEGISLATIVE COUNSEL'S DIGEST

AB 568, as amended, Garcia. ~~Rapid~~ HIV tests.

Existing law requires a licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery to obtain or cause to be obtained a blood specimen of the woman and to submit that blood specimen to a laboratory for an HIV test. Prior to obtaining a blood specimen, existing law requires the physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery to ensure that the woman is informed that she has a right to accept or refuse the testing. Existing law requires the acceptance of testing for HIV to be documented in writing and signed by the patient.

Existing law authorizes the State Department of Health Services, through its Office of AIDS and the authorized agents of the office, to

participate in a rapid human immunodeficiency virus (HIV) test research program conducted with the federal Centers for Disease Control and Prevention, involving innovative HIV testing and counseling programs. Under the rapid HIV test research program, existing law authorizes the department to perform and report clinical test results using a rapid HIV test for diagnosis, prior to test approval by the federal Food and Drug Administration (FDA). However, existing law requires test performance and reporting to be done only to the extent allowed under that device's investigational approval by the FDA and pursuant to a California Health and Human Services Agency Institutional Review Board-approved research protocol.

~~At the time of a woman's annual gynecological examination, this bill would require the physician and surgeon or other person performing the annual gynecological examination to offer to test the woman for the presence of HIV through a blood specimen or a rapid HIV test. The bill would require the acceptance of testing for HIV to be documented in writing and signed by the patient. The bill would prescribe procedures for the conduct of the HIV test. After the results of the HIV test been received, the~~ *This bill would require that any woman seeking an annual gynecological examination or family planning appointment be provided with information on HIV and AIDS, and would require that the woman be offered the option of being tested onsite, if available, or referral information to other testing locations. The bill would require the physician and surgeon or other person health care professional attending the woman at the time the results are received to ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications for the woman's health, including any followup care that is indicated.*

This bill would require a positive test result to be reported to the local health officer as a reportable disease or condition. To the extent this bill would expand the duties of local health officers, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) The Centers for Disease Control and Prevention reported*
4 *in 2003 that heterosexual women accounted for a staggering 26*
5 *percent of all new HIV and AIDS cases with African American*
6 *and Hispanic Women accounting for 83 percent of these*
7 *diagnoses. Heterosexual sex has been the primary method of HIV*
8 *exposure for women, with a growing number becoming infected*
9 *by male partners who participate in high risk behavior, including*
10 *sexual relations with multiple partners, sexual relations with*
11 *other males, needle users, or sharing needles.*

12 *(b) There are many reasons why fewer women seek*
13 *care—especially in communities where social and cultural norms*
14 *may discourage women from speaking out about their sexuality.*
15 *In some cultures, the promiscuous behavior of male partners is*
16 *ignored, and in others, seeking assistance brings fear of being*
17 *stigmatized. As a result, women fail to recognize the early*
18 *symptoms of HIV and AIDS and do not dare raise*
19 *questions—even with their doctors.*

20 *(c) The current method of obtaining an HIV or AIDS test*
21 *requires women to be proactive or to seek treatment if they*
22 *believe they may have been exposed. This requires actively*
23 *seeking out a testing site, requesting an examination from an*
24 *unfamiliar medical provider, and in most cases, waiting*
25 *anxiously for weeks for the results. In light of this frightening*
26 *threat to women's health, it is crucial all women be provided*
27 *with information about risk factors and be encouraged to*
28 *undergo testing during their normal office visits.*

29 ~~SECTION 1.~~

30 *SEC. 2. Section 121022 is added to the Health and Safety*
31 *Code, to read:*

32 ~~121022. (a) At the time of a woman's annual gynecological~~
33 ~~examination, the physician and surgeon or other person~~
34 ~~performing the annual gynecological examination shall offer to~~
35 ~~test the woman for the presence of the human immunodeficiency~~

1 virus (HIV) through a blood specimen or a rapid HIV test as
2 authorized pursuant to Section 120917.

3 (b) ~~The physician and surgeon or other person performing the~~
4 ~~annual gynecological examination shall ensure that the woman is~~
5 ~~informed of the routine nature of the blood test, the purpose of~~
6 ~~the testing, the risks and benefits of the test, the risk of~~
7 ~~transmission of HIV, that approved treatments are known to~~
8 ~~decrease the risk of transmission of HIV, and that the woman has~~
9 ~~a right to accept or refuse this testing. The acceptance of testing~~
10 ~~for HIV shall be documented in writing on the form developed~~
11 ~~by the department and the Office of AIDS pursuant to Section~~
12 ~~125092, or on a form that is substantially equivalent in content,~~
13 ~~and signed by the patient. A copy of this form shall be~~
14 ~~maintained in the medical record.~~

15 *Any woman seeking an annual gynecological examination or*
16 *family planning appointment, at the time of signing in or*
17 *otherwise registering and completing any required forms or*
18 *documentation, shall be provided information on HIV and AIDS.*
19 *In addition, the woman shall be offered the option of being tested*
20 *onsite, if available, or provided referral information to other*
21 *testing locations. The information provided shall include, but*
22 *shall not be limited to, all of the following:*

23 (1) *A description of the modes of HIV and AIDS transmission.*

24 (2) *A description of risk factors that may expose women to*
25 *HIV and AIDS, including, but not limited to, partners who may*
26 *not be truthful about having sexual relations outside their*
27 *monogamous relationship, males having sex with other males or*
28 *prostitutes, or partners using intravenous drugs or sharing*
29 *needles.*

30 (3) *A description of the different HIV and AIDS tests*
31 *available, including blood or other bodily fluid test.*

32 (4) *Information on whether or not testing may be covered by*
33 *medical insurance.*

34 (b) *The information sheet shall include:*

35 (1) *A clearly marked section in bold print with a place for the*
36 *patient's signature where they may accept or decline HIV and*
37 *AIDS testing.*

38 (2) *If testing is not available onsite, referral information shall*
39 *be provided.*

(c) (1) If the woman chooses to be tested for HIV through a blood test, the physician and surgeon or other ~~person performing the annual gynecological examination~~ *health care professional attending the woman* shall obtain a blood specimen from the woman and submit it to a clinical laboratory licensed by the department or to an approved public health laboratory for a test to determine the presence of HIV, and the results shall be reported to both of the following:

(A) A physician and surgeon or other ~~person performing an annual gynecological examination~~ *health care professional* who ordered the test, and who shall subsequently inform the woman tested.

(B) A positive test result shall be reported to the local health officer, with the information required and within the timeframes established by the department, pursuant to Chapter 4 (commencing with Section 2500) of Title 17 of the California Code of Regulations.

~~(2) If the woman chooses to be tested for HIV through a rapid HIV test, the test shall be conducted only as authorized pursuant to Section 120917.~~

(2) If the woman chooses a rapid HIV test, the woman shall be informed that the preliminary result of the rapid HIV test is indicative of the likelihood of HIV infection and that the result must be confirmed by an additional more specific test, or, if approved by the federal Food and Drug Administration for that purpose, a second different rapid HIV test.

(d) After the results of the HIV test been received, the physician and surgeon or other person attending the woman at the time the results are received shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications for the woman's health, including any followup care that is indicated. If the woman tests positive for HIV antibodies, she shall also receive, whenever possible, a referral to a provider, provider group, or institution specializing in care for HIV positive women. Health care providers are also strongly encouraged to seek consultation with other providers specializing in the care of HIV positive women.

~~(e) HIV information and counseling provided pursuant to subdivision (d) shall include, but shall not be limited to, all of the following:~~

1 ~~(1) A description of the modes of HIV transmission.~~

2 ~~(2) A discussion of risk-reduction behavior modifications~~
3 ~~including methods to reduce the risk of transmission.~~

4 ~~(3) If appropriate, referral information to other HIV prevention~~
5 ~~and psychosocial services including anonymous and confidential~~
6 ~~test sites approved by the Office of AIDS.~~

7 ~~(f)~~

8 ~~(e)~~ Nothing in this section shall be construed to require
9 mandatory testing. Any documentation or disclosure of
10 HIV-related information shall be made in accordance with
11 Chapter 7 (commencing with Section 120975) of Part 4 of
12 Division 105 regarding confidentiality and informed consent.

13 ~~SEC. 2.~~

14 ~~SEC. 3.~~ If the Commission on State Mandates determines that
15 this act contains costs mandated by the state, reimbursement to
16 local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.